

2007 DRAFTING REQUEST

Bill

Received: **08/30/2006**

Received By: **phurley**

Wanted: **As time permits**

Identical to LRB:

For: **Mark Gundrum (608) 267-5158**

By/Representing:

This file may be shown to any legislator: **NO**

Drafter: **phurley**

May Contact:

Addl. Drafters:

Subject: **Drunk Driving - procedures**
Drunk Driving - refusals/testing

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Gundrum@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Time schedule for refusal hearings

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	phurley 08/30/2006	kfollett 09/12/2006					State
/1	phurley 12/07/2006	kfollett 12/08/2006	rschluet 09/13/2006		mbarman 09/13/2006		State
/2			natzke 12/08/2006		sbasford 12/08/2006	mbarman 05/14/2007	

FE Sent For:

at intro
5/25/07

<END>

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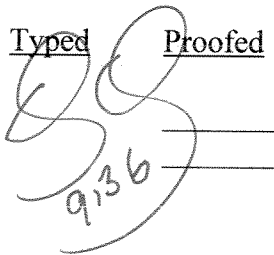
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/?	phurley	11 Kjf 9/12					

FE Sent For:

<END>

Hurley, Peggy

To: Gundrum, Mark
Subject: RE: An OWI loophole

Hi Mark,

No problem. I'll get to it as soon as I can.

Peggy

-----Original Message-----

From: Gundrum, Mark
Sent: Friday, August 04, 2006 10:50 AM
To: Hurley, Peggy
Cc: Burri, Lance
Subject: FW: An OWI loophole

Peggy, could you take a look at this e-mail from asst. D.A. Donald Conner and get legislation drafted that would accomplish what he wants to see accomplished. If I could just have a draft on this by the end of September that would be great. Thanks.

Mark

-----Original Message-----

From: Conner II, Donald L. [mailto:Donald.Conner@goRacine.org]
Sent: Thursday, August 03, 2006 12:58 PM
To: Rep.Gundrum
Cc: Usealman, Kevin; Burri, Lance; Churchill, Jolene
Subject: An OWI loophole

Dear Rep. Gundrum,

I am an assistant district attorney in Racine County. I am corresponding at the request of Mike Nieskes, the District Attorney here in Racine. I know of your stance against "drunk driving" and your continued commitment to strengthening the accompanying laws of this State. I am writing to demonstrate a glaring loophole that many experienced defense attorney are exploiting to the advantage of their clients but to the detriment of the community.

As you are likely aware, if an individual is arrested for OWI and the accompanying prohibited blood alcohol charge, the Department of Motor Vehicles commences an administrative action to suspend the individual's operating privilege. If the person is unsuccessful at a hearing to fight that suspension, they can seek a judicial review of the hearing examiner's decision to the municipal or circuit court assigned to the underlying offense. This is pursuant to Wis. Stat. 343.305(8)(c)1.

Unfortunately, that same statute goes on to state, "[t]he judicial review shall be conducted at the time of the underlying offense under s. 346.63." Wis. Stat. 343.305(8)(c)2 goes on to state that the DMV shall vacate their administrative suspension unless the results of the review are conducted within 60 days of the request.

I believe when this statute was designed it was feasible to have a criminal OWI trial in the allotted timeframe as the majority of alcohol levels were determined by breath to which the officers could testify.

That is no longer the case. In the majority of the third, fourth and felony OWI files a blood draw is implemented. This means, to prove our case at trial, an analyst from the State Lab of Hygiene is required.

Typically, trials must be set out at least 90 days as the analysts are testifying all over the state and their availability is obviously limited. This means no determination on the judicial review could possibly be heard in the timeframe given and this offender will be driving until the conclusion of their case.

Defense Attorney know this and often set matters out from trial four to five months from the requested judicial review. Even if we as prosecutors can get the trial scheduled with the 60 day window, it would be a rarity that we could actually proceed simply due to witness problems. This means a third offense OWI defendant who had a .365% blood alcohol concentration could still be driving legally for months while the case is pending.

Any assistance you could provide in closing this loophole, i.e. changing the word shall to may and then eliminating the 60 day deadline all together. These review hearings could easily be held at an earlier time than the jury trial. The witnesses and the legal burdens are wholly different. There is no conceivable need to have the review and the trial together. In no possible way does this affect judicial economy.

Thank you for your time and attention to this matter.

Donald L. Conner
Assistant District Attorney
Racine County District Attorneys Office
730 Wisconsin Avenue, Ninth Floor
Racine, Wisconsin 53402
Direct Line 262.636.3882

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If you received this message in error, you may not review, use, copy or disclose the message or any attachments. If you have received this message in error, please advise the sender by a reply email and delete the message.

Thank you.

The County of Racine does not endorse any opinions, conclusions or other information contained within this email and any attachments that does not pertain to official business.

0078/1

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

8-11-06

Gen

- 1 AN ACT ...; relating to: judicial review of an administrative suspension of driving
- 2 privileges.

Analysis by the Legislative Reference Bureau

CPs:
no changes
here

Under current law, if a person is suspected of operating a vehicle while intoxicated, under the influence of an intoxicant, or with a prohibited amount of alcohol or a controlled substance in his or her blood (OWI-related offense), he or she may be required by a law enforcement officer to submit to chemical testing to determine whether the person is operating a vehicle with a prohibited alcohol concentration or a detectable amount of a controlled substance in his or her blood. If the chemical test indicates a prohibited alcohol concentration or a detectable amount of a controlled substance in the person's blood, then the law enforcement officer takes possession of the person's driver's license and forwards it to the Department of Transportation (DOT). The DOT suspends the person's driving privilege for a period of 6 months.

Current law allows the person to request an administrative hearing to determine whether the person's operating privilege was properly suspended. If the conclusions of the administrative hearing are not acceptable to the person, current law allows the person to have the determination reviewed by the court that is hearing the OWI-related offense, at the same time the court conducts the trial of the OWI-related offense.

Further, current law requires DOT to vacate the administrative suspension of the person's operating privilege unless, within 60 days of the date of the request for judicial review of the administrative hearing decision, DOT has been notified of the

X SIX

result of the judicial review or of an order of the court entering a stay of the hearing examiner's order continuing the suspension.

X Under this bill, the court that hears the OWI-related offense may, but need not, review the result of the administrative hearing at the time it hears the OWI-related offense. Further, this bill requires the DOT to sustain the administrative suspension of the person's driving privilege unless it receives notification that a court has rescinded the suspension.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

✓
1 **SECTION 1.** 343.305 (8) (c) 1. of the statutes is amended to read:

2 343.305 (8) (c) 1. An individual aggrieved by the determination of the hearing
3 examiner may have the determination reviewed by the court hearing the action
4 relating to the applicable violation listed under sub. (3) (a), (am), or (ar). If the
5 individual seeks judicial review, he or she must file the request for judicial review
6 with the court within 20 days of the issuance of the hearing examiner's decision. The
7 court shall send a copy of that request to the department. The judicial review shall
8 may be conducted at the time of the trial of the underlying offense under s. 346.63.
9 The prosecutor of the underlying offense shall represent the interests of the
10 department.

✓
History: 1987 a. 3, 27, 399; 1989 a. 7, 31, 56, 105, 359; 1991 a. 39, 251, 277; 1993 a. 16, 105, 315, 317, 491; 1995 a. 27 ss. 6412cnL, 9126 (19); 1995 a. 113, 269, 425, 426, 436, 448; 1997 a. 35, 84, 107, 191, 237, 290; 1999 a. 9, 32, 109; 2001 a. 16 ss. 3421m to 3423j, 4060gk, 4060hw, 4060hy; 2001 a. 104; 2003 a. 97, 199; 2005 a. 332, 413.

11 **SECTION 2.** 343.305 (8) (c) 2. of the statutes is amended to read:

12 343.305 (8) (c) 2. The court shall order that the administrative suspension be
13 either rescinded or sustained and forward its order to the department. The
14 department shall vacate sustain the administrative suspension under sub. (7)
15 unless, within 60 days of the date of the request for judicial review of the
16 administrative hearing decision, the department has been notified of the result of the

- 1 judicial review or of an order of the court entering a stay rescinding of the hearing
- 2 examiner's order ~~continuing the suspension~~.

History: 1987 a. 3, 27, 399; 1989 a. 7, 31, 56, 105, 359; 1991 a. 39, 251, 277; 1993 a. 16, 105, 315, 317, 491; 1995 a. 27 ss. 6412cnL, 9126 (19); 1995 a. 113, 269, 425, 426, 436, 448; 1997 a. 35, 84, 107, 191, 237, 290; 1999 a. 9, 32, 109; 2001 a. 16 ss. 3421m to 3423j, 4060gk, 4060hw, 4060hy; 2001 a. 104; 2003 a. 97, 199; 2005 a. 332, 413.

3

(END)

Hurley, Peggy

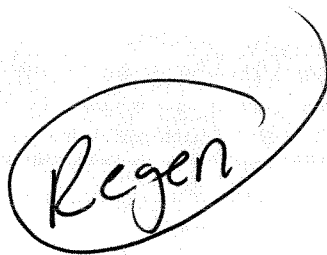
From: Burri, Lance
Sent: Thursday, December 07, 2006 9:54 AM
To: Hurley, Peggy
Subject: admin suspension of drivers licenses - Irb 0078

Peggy, got the following comment on this draft:

I would endorse this provision, but note that the language in the last sentence of 343.305(8)(c)2 needs to have the words "entering a" right before the change to "rescinding" removed. The sentence makes no sense with those words included.

Would you have a look and see if you agree?

Lance Burri
Office of Rep. Mark Gundrum
608-267-5158 or 888-534-0084

2007 BILL

- 1 **AN ACT to amend 343.305 (8) (c) 1. and 343.305 (8) (c) 2. of the statutes; relating**
2 **to: judicial review of an administrative suspension of driving privileges.**

Analysis by the Legislative Reference Bureau

Under current law, if a person is suspected of operating a vehicle while intoxicated, under the influence of an intoxicant, or with a prohibited amount of alcohol or a controlled substance in his or her blood (OWI-related offenses), he or she may be required by a law enforcement officer to submit to chemical testing to determine whether the person is operating a vehicle with a prohibited alcohol concentration or a detectable amount of a controlled substance in his or her blood. If the chemical test indicates a prohibited alcohol concentration or a detectable amount of a controlled substance in the person's blood, then the law enforcement officer takes possession of the person's driver's license and forwards it to the Department of Transportation (DOT). The DOT suspends the person's driving privilege for a period of six months.

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BILL

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BILL

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2 examiner's order ~~continuing the suspension~~.

3 (END)

Parisi, Lori

From: Burri, Lance

Sent: Monday, May 14, 2007 10:05 AM

To: LRB.Legal

Subject: Draft Review: LRB 07-0078/2 Topic: Time schedule for refusal hearings

Please Jacket LRB 07-0078/2 for the ASSEMBLY.

05/14/2007